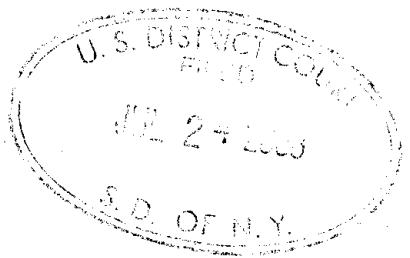


MANDATE



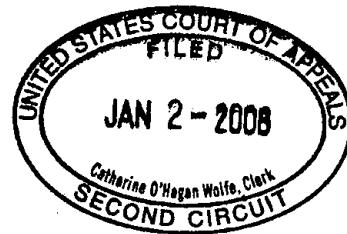
S.D.N.Y. - N.Y.C.
07-cv-5751
Wood, C. J.

United States Court of Appeals FOR THE SECOND CIRCUIT

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Daniel Patrick Moynihan United States Courthouse, 500 Pearl Street, in the City of New York, on the 2nd day of January, two thousand eight,

Present:

Richard J. Cardamone,
Rosemary S. Pooler,
Circuit Judges,
John F. Keenan,
District Judge.



Alberto Nieves,

Plaintiff-Appellant,

v.

07-3354-pr

New York City Police Department, *et al.*,

Defendants-Appellees.

Appellant, *pro se*, moves for leave to proceed *in forma pauperis* and for judgment transcripts. Upon due consideration, it is hereby ORDERED that the motion for leave to proceed *in forma pauperis* is GRANTED. It is further ordered that the judgment of the district court is VACATED, and the case is REMANDED with instructions to provide Appellant with an opportunity to amend his complaint. Although "a § 1983 cause of action for damages attributable to an unconstitutional

*The Honorable John F. Keenan, United States District Court for the Southern District of New York, sitting by designation.

A TRUE COPY

Thomas Asreen, Acting Clerk

by

John F. Keenan
Deputy Clerk

ISSUED AS MANDATE: JUL 23 2008

conviction or sentence does not accrue until the conviction or sentence has been invalidated," *Heck v. Humphrey*, 512 U.S. 477, 489-490 (1994), the Supreme Court has exempted from this rule actions that "even if successful, would not necessarily imply that the plaintiff's conviction was unlawful," *id.* at 487 n.7. An example of this is an action alleging an unlawful search, the illegality of which would not affect the validity of defendant's conviction. See *Woods v. Candela*, 47 F.3d 545, 546 (2d Cir. 1995). The remaining motion is DENIED as moot.

FOR THE COURT:
Catherine O'Hagan Wolfe, Clerk

By. Frances Carr

JAN 2 - 2008